

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

ESMERALDA JASMINE MENDEZ AND  
EVELAIDY MENDEZ

*Plaintiffs,*

*v.*

FIT TRANSPORT LOGISTICS, INC.,  
DIALVAN, INC. AND HERMILIO GARZA,  
JR.

*Defendants.*

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Civil Action No. 3:20-cv-270-DCG

**AFFIDAVIT OF L. CULLEN MOORE**

Before me, the undersigned notary, on this day, appeared L. Cullen Moore, a person whose identity is known to me. After I administered an oath to him, upon his oath, he said:

1. "My name is L. Cullen Moore. I am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. I am an attorney licensed to practice in the State of Texas. I am recognized by Martindale-Hubble as an "AV" rated lawyer. Since 1991 I have practiced in many venues across the State of Texas, including El Paso County and Webb County. I have represented both Plaintiffs and Defendants in trucking cases just like the one at issue.
3. Plaintiffs retained our firm to represent them in a personal injury suit for their damages arising out of a car crash that occurred on July 1, 2018 on Highway 35 near milepost 40 near Cotulla, Texas.
4. I have attempted to resolve Plaintiffs' Motion to Remand with counsel for Defendants by requesting that he consider specific statutory law and 5<sup>th</sup> Circuit controlling law that prohibits the removal of this action. (See letter attached hereto as Exhibit "A"). However, at the time of this filing, I have received no response.
5. I spent four (4) hours reviewing the removal; researching the issues raised in the removal; drafting correspondence to counsel for the Defendants; and, drafting the Motion to Remand and this affidavit.
6. Because of my experience, my knowledge of customary billing rates, it is my opinion the reasonable and necessary attorney's fees in responding to the Defendants' action for removal is \$1,400.00. This is based on a

reasonable and necessary hourly rate of \$350.00 per hour and a total of 4 hours spent on the removal action filed by Defendants as explained in paragraph 5, above.

7. The fee I charged is one customarily charged in this area for the same or similar services for an attorney with my experience, reputation, and ability, considering the amount in controversy, nature of the matter, the time limitations imposed, the results obtained, and the nature and length of my relationships with the Plaintiff.

Further Affiant sayeth not."



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L. CULLEN MOORE

STATE OF TEXAS

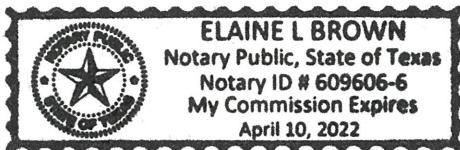
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COUNTY OF NUECES

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public,  
on the 30<sup>th</sup> day of October, 2020, to which witness my official hand and seal of office.

  
Elaine L. Brown

Notary Public, State of Texas





WIGINGTON RUMLEY DUNN & BLAIR L.L.P.

ATTORNEYS AT LAW

L. Cullen Moore  
*Attorney*

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October 30, 2020

Mr. Clinton V. Cox, IV  
Mr. Dennis Postiglione  
COX P.L.L.C.  
7859 Walnut Hill Lane, Suite 310  
Dallas, Texas 75230  
*Attorneys for Defendants*

Via Email

RE: Cause No. 2020CVA001400D3  
*Mendez vs Fit Transport Logistics, Inc. et al*  
In the 341st Judicial District Court, Webb County, Texas  
WRDB File No.: 22300

Dear Counsel:

Please consider this my attempt to consult with you on our motion to remand and request that you agree to remand the case back to state court. I am assuming you were simply not aware of the rule that even when cases are otherwise diverse and ripe for removal, a forum or resident Defendant may not remove a case to federal court. All of your clients are forum/resident Defendants so none of them may remove this case. It is also sometimes referred to as the in-state-defendant barrier. 28 U.S.C. 1441(b)(2); *Crockett v R.J. Reynolds Tobacco Co.*, 436 F.3d 529, 532 (5<sup>th</sup> Cir. 2006). Please advise at your earliest convenience your agreement to remand this case back to state court.

Very truly yours,  
**WIGINGTON RUMLEY DUNN  
& BLAIR LLP**

/s/ *L. Cullen Moore*

L. Cullen Moore

LCM/mm

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**Exhibit A**